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Application No.: 10/811,733
Second Preliminary Amendment
Attorney Docket: KLEIN-084BC

REMARKS**I. PROCEDURAL HISTORY**

In the parent case, namely, United States Patent App. Ser. No. 10/811,733 the Examiner mailed a Final Office Action on December 26, 2007.

On March 10, 2008 during the pendency of the parent case, Applicant filed this continuation patent application claiming the benefit of the Application Ser. No. 10/811,733. By this Second Preliminary Amendment, Applicant reintroduces the claim set in the parent case as of the last Office Action and amends the same to overcome the rejections identified in the Final Office Action. Moreover, Applicant provides the following remarks in support of Applicant's contentions that the amended claims provided above is in condition for allowance.

II. SUMMARY OF LAST OFFICE ACTION IN PARENT CASE

On December 26, 2007, the Examiner issued a Final Office Action in the parent case. In that Office Action, Claims 15-21 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement.

Claims 1 and 6 were rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman (U.S. Pat. No. 5,447,493) in view of Holtorf (U.S. Pat. No. 6,260,434) and in further view of Faeser (U.S. Pat. No. 4,544,336). Claims 2-5 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman in view of Holtorf and in further view of Faeser and in further view of Reimels (U.S. Pat. No. 5,580,347). Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman in view of Holtorf in further view of Faeser and in further view of Wheeldon (U.S. Pat. No. 4,604,034). Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman in view of Holtorf in further view of Faeser and in further view of Wheeldon and still in further view of Reimels. Claim 9 was rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman in view of Holtorf in further view of Faeser and in further view of Burbank (U.S. Pat. No. 6,955,655). Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman in view of Holtorf in further view of Faeser and in further view of Burbank and still in further view of Reimels. Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over

DRAFT

Application No.: 10/811,733
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Blugerman in view of Burbank and in further view of Reimels. Claims 13 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the references with respect to Claims 11 and 12 discussed above in further view of Oda (U.S. Pat. No. 5,810,765). Claims 15-17 and 19-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gardineer (U.S. Pat. No. 4,674,962) in view of Burbank and in further view of Reimels. Claims 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gardineer in view of Wheeldon and in further view of Reimels.

II. APPLICANT'S RESPONSE

Claims 29-32 and 34-39 substantially correspond to Claims 1-4 and 6-21, respectively in the parent case. Claim 33 is based on the subject matter of Claim 5 in the parent case but considered broader than such claim.

A. Claims 29-32 and 34-39

In the last Office Action of the parent case, Claim 1 (now Claim 29) was rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman in view of Holtorf and in further view of Faeser. As understood, the Examiner is of the opinion that Holtorf discloses a foot pedal delivering one pulse of air to control air inlet in the console.¹ In support thereof, the Examiner refers Applicant to Col. 3, Lines 44-47 and Col. 4, Lines 1-9 of Holtorf. (See last Office Action in parent case, page 3, lines 16-18). Applicant respectfully disagrees.

Claim 29 (previously Claim 1) recites that the operation of the peristaltic pump is controlled through a pulse of air delivered to the control air inlet. As shown in Exhibit A, the dictionary definition for "pulse" may be each heart beat (i.e., a single rise and fall) or rhythmic throbbing (i.e., a plurality of successive rises and falls). Applicant respectfully submits that Holtorf does not disclose a pulse of air to control the pump. In support thereof, Applicant respectfully directs the Examiner's attention to Col. 4, Lines 5-6 of Holtorf which recite that a signal related to the amount of pedal depression is provided via the line 14.

¹ As understood, the Examiner is of the opinion that Claim 1 recites one pulse of air. However, Applicant respectfully submits that Claim 1 recites "a pulse of air" and does not specify whether the pulse is a single (i.e., one) or a plurality of pulses. As shown by the dictionary (see Exhibit A), a pulse may refer to a single pulse or a plurality of pulses.

Application No.: 10/811,733
Second Preliminary Amendment
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DRAFT

Holtorf appears to suggest that the signal is related to the magnitude (i.e., a rise but not fall) of air pressure created by the foot pedal depression. Accordingly, Holtorf does not disclose the "pulse of air" subject matter recited in Claim 1. For the foregoing reasons, Applicant respectfully submits that the cited prior art does not disclose, suggest or make obvious the invention recited in Claim 1. Hence, Claim 1 is believed to be in condition for allowance.

The dependent claims of Claim 1 are also believed to be in condition for allowance for containing additional patentable subject matter and for being dependent upon allowable base Claim 1.

By way of example and not limitation, Claim 32 recites that the foot pedal under rate control mode is operative to adjust flow rate of the fluid by controlling duration of the pressure applied to the foot pedal. In the last Office Action of the parent case, the Examiner on page 5 of such Office Action states that "Reimels further teaches that the foot pedal 14 is capable of adjusting the flow rate of the fluid by controlling duration of depression applied thereto; wherein the flow rate of the fluid could be proportional to the duration of depression applied to the foot pedal 14." Applicant has been unable to find reference within the Reimels reference that discloses or teaches such subject matter. It does not appear that Reimels adjusts the flow rate of the fluid based upon the duration of depression of the foot pedal. Rather, it appears that the flow rate of the fluid is controlled by the amount of depression of the foot pedal. In support thereof, Applicant respectfully directs the Examiner's attention to Col. 5, Lines 51-Col. 6, Line 9 which states that the foot pedal controls a potentiometer whose resistance varies with the movement of the foot pedal. Accordingly, as understood, the resistance of the potentiometer remains constant at a particular depression amount of the foot pedal. Hence, the flow rate of the fluid, as understood, remains constant at a particular amount of depression of the foot pedal. The flow rate of the fluid does not appear to vary based on the duration of depression. Hence, the cited prior art does not appear to disclose, suggest or make obvious the invention recited in Claim 32. Thus, Claim 32 is believed to be in condition for allowance.

Application No.: 10/811,733
Second Preliminary Amendment
Attorney Docket: KLEIN-084BC

DRAFT

B. Claim 33

Claim 33 is based upon Claim 5 of the parent case and is considered to be broader than Claim 5 of the parent case. Nonetheless, Claim 33 is believed to be in condition for allowance for the same reasons discussed above in relation to Claim 32. Moreover, Claim 33 further recites that the flow rate of the fluid is proportional to the duration of depression of the foot pedal. Applicant respectfully submits that Reimels does not disclose, suggest or make obvious the "proportional to duration of foot pedal depression" subject matter. Hence, Claim 33 is believed to be in condition for allowance.

C. Claims 40-42

In the last Office Action of the parent case, Claim 12 (now Claim 40) was rejected under 35 U.S.C. §103(a) as being unpatentable over Blugerman in view of Burbank and in further view of Reimels. In response, Applicant has amended the subject matter of previous Claim 12 (now Claim 40) to recite that the flow rate sensor is "in contact with" the flexible tubing. As understood, the Examiner appears to be utilizing the Burbank reference to show a flow rate sensor in communication with a flexible tubing. (See page 9 of the last Office Action in the parent case). Upon closer inspection of the Burbank reference, it appears that the flow rate sensor of the Burbank reference is an ultrasonic sensor 30. As shown in Figure 4 of the Burbank reference, the ultrasonic sensor 30 does not appear to be in contact with the flexible tubing 26. The ultrasonic sensor of Burbank depends on the transmission and receipt of sound waves. As such, the ultrasonic sensor does not appear to be in contact with the flexible tubing. The Burbank reference appears to be silent as to the exact positioning of the ultrasonic sensor with respect to the flexible tubing 30. However, as shown in Figure 4, it is believed that the ultrasonic sensor 30 is not in contact with the flexible tubing 26. Hence, the cited prior art does not disclose, suggest or make obvious the invention recited in Claim 40. Thus, Claim 40 is believed to be in condition for allowance.

The dependent claims of Claim 40 are also believed to be in condition for allowance for containing additional patentable subject matter and for being dependent upon allowable base Claim 40.

Application No.: 10/811,733
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D. Claims 43-49

In the Office Action, Claim 15 (now Claim 43) was rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Also, Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gardineer in view of Wheeldon, and in further view of Reimels.

In response, Applicant has amended Claim 43 (previously Claim 15) to recite a "force sensor in contact with the rollers." Support for a force sensor is found in paragraph 10 of the instant specification. Hence, the rejection under 35 U.S.C. §112, first paragraph has been overcome. The force sensor detects the force exerted by the roller. Upon detection of the roller, the force sensor sends an electrical or mechanical signal to the sound generating device.

Applicant respectfully submits that Burbank which the Examiner appears to utilize for the purposes of establishing a flow rate sensor in contact with rollers does not disclose a force sensor in contact with rollers. As discussed above, the sensor of Burbank is an ultrasonic sensor which does not rely upon mechanical contact with the flexible tubing. Moreover, in Figure 4, the ultrasonic sensor 30 does not appear to be in contact with the flexible tubing. Additionally, an ultrasonic sensor is not a force sensor. An ultrasonic sensor does not detect a force. Hence, the cited prior art does not disclose, suggest or make obvious the invention recited in Claim 43. Thus, Claim 43 is believed to be in condition for allowance.

The dependent claims of Claim 43 are also believed to be in condition for allowance for containing additional patentable subject matter and for being dependent upon allowable base Claim 43.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully submits that all pending claims are believed to be in condition for allowance. An early notice of allowance is therefore respectfully requested. Should the Examiner have any suggestions for expediting allowance of the above-identified application, the Examiner is invited to contact Applicant's representative at the telephone number listed below.

Application No.: 10/811,733
Second Preliminary Amendment
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DRAFT

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

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